

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re:

The Diocese of Buffalo, N.Y.,

Debtor.

Chapter 11

Case No. 20-10322 (CLB)

**STATEMENT OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS REGARDING DEBTOR'S
MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE APPOINTMENT OF AN ADDITIONAL MEDIATOR**

The Official Committee of Unsecured Creditors (the “**Committee**”) of The Diocese of Buffalo, N.Y., the debtor and debtor-in-possession (the “**Debtor**” or the “**Diocese**”) in the above captioned case (the “**Case**”) under chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), by and through its undersigned counsel, respectfully submits this statement (this “**Statement**”) regarding the *Diocese’s Motion for Entry of an Order Authorizing the Appointment of an Additional Mediator* (the “**Motion**”) [Doc. No. 1990]. The Statement supplements the *Limited Objection of the Official Committee of Unsecured Creditors to Debtor’s Motion for Entry of and Order Authorizing the Appointment of an Additional Mediator* [Docket No. 2024].

STATEMENT

1. The Committee recommends the appointment of Judge Patrick NeMoyer as the additional mediator for this Chapter 11 Case. Judge NeMoyer is an Associate Justice of the Appellate Division of the Supreme Court of the State of New York, Fourth Judicial Department. Prior to his appointment to the Appellate Division in 2016, Judge NeMoyer was a Justice of the Supreme Court (1997-2016); the United States Attorney for the Western District of New York

(1993-1997); Erie County Attorney (1988-1993); and principal law clerk to the Hon. James B. Kane of the Eighth Judicial District. Judge NeMoyer has also served on the New York State Pattern Civil Jury Instructions Committee since 2003, illustrating the esteem in which Judge NeMoyer is held by his colleagues on the bench. His experience on the bench, as Erie County Attorney and U.S. Attorney include both insurance¹ and tort matters. He is well-versed in New York law on these matters. A copy of Judge NeMoyer's professional biography is attached hereto as **Exhibit A**.

2. Judge NeMoyer will retire from the bench on December 31, 2022. Thus, he will be able to serve as mediator in this case beginning January 1, 2023. He has no other professional engagements at this time. Nor does he have any conflicts. Judge NeMoyer's proposed hourly rate for this engagement would be \$450 per hour. He is located in Buffalo and can attend mediation sessions in Buffalo.

3. The Committee understands that Judge NeMoyer has discussed the potential engagement with the Diocese and certain insurers.

4. The Committee is disappointed that the prior additional mediator appointed in this case resigned. However, that resignation presents an opportunity to appoint Judge NeMoyer, who was not previously available to be appointed mediator because he was still sitting on the bench when the Court last considered the parties' requests to appoint an additional mediator.

¹ Judge NeMoyer's experience with insurance matters is illustrated by reported cases involving insurance matters, including *Nationwide Affinity Insurance Co. of America v. Beacon Acupuncture, P.C.*, 175 A.D.3d 1836 (Fourth Dep't 2019); *Koecki's Grandview Grove Corp. v. Acadia Insurance Co.*, 158 A.D.3d 1306 (Fourth Dep't 2018); *Jeffrey's Auto Body, Inc. v. Allstate Insurance Co.*, 159 A.D.3d 1481 (Fourth Dep't 2018); *Utica Mutual Ins. Co. v. Alfa Mutual Ins. Co.*, 154 A.D.3d (Fourth Dep't 2017); *Main Street America Assurance Co. v. Merchants Mutual Ins. Co.*, 2022 N.Y. Slip Op 05627 (Fourth Dep't 2022); *Lobello v. New York Mutual Fire Ins. Co.*, 152 A.D.3d 1206 (Fourth Dep't 2017); *Tuttle v. State Farm Mutual Automobile Ins. Co.*, 149 A.D.3d 1477 (Fourth Dep't 2017). In addition, a Federal Court matter cites an unpublished decision and order regarding insurance issues. *HDI-Gerling America Ins. Co. v. Liberty Mutual Ins. Co.*, Case No. 10-CV-00740(S)(M) (W.D.N.Y., July 16, 2013). These cases are a small sample of cases in which Judge NeMoyer presided over coverage disputes. A search for such cases disclosed dozens of insurance matters in which Judge NeMoyer presided over insurance coverage disputes.

Judge NeMoyer's reputation is that he a fair, well-prepared and thoughtful jurist. He knows the Buffalo community and applicable New York insurance and tort law. As such, the Committee believes that he is the best candidate for the position of additional mediator to complement Judge Kaplan.

5. In the Court's Decision and Order of November 4, 2022, the Court gave deference to the Committee's selection of mediator. The Committee requests that the Court do so in this case as well.

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP.

Dated: December 6, 2022

/s/ Ilan D. Scharf

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*Co-Counsel to the Official Committee of Unsecured
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CERTIFICATE OF SERVICE

I, La Asia S. Canty, am over the age of eighteen years, am employed by Pachulski Stang Ziehl & Jones LLP. I am not a party to the within action; my business address is 780 Third Avenue, 34th Floor, New York, New York 10017-2024.

Pursuant to the Court's Amended Administrative Procedures, on December 6, 2022, the *Statement of the Official Committee of Unsecured Creditors Regarding Debtor's Motion for Entry of an Order Authorizing the Appointment of an Additional Mediator* was served via the Court's ECF system, via electronic mail upon the parties set forth on the service list annexed hereto as **Exhibit 1**, and via First Class US Mail upon the parties set forth on the service list annexed hereto as **Exhibit 2**.

/s/ La Asia S. Canty

La Asia S. Canty

EXHIBIT 1

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KEYBANK	ATTN: ALEXANDRA WEHR	250 DELAWARE AVE			BUFFALO	NY	14202
LAKE SHORE SAVINGS	31 EAST FOURTH STREET				DUNKIRK	NY	14048
M&T BANK	C/O HODGSON RUSS LLP	ATTN: GARRY M. GRABER	140 PEARL STREET, SUITE 100		BUFFALO	NY	14202
M&T BANK	ATTN: CALVIN LEUNG	345 MAIN ST.			BUFFALO	NY	14203
M&T BANK	ONE M&T PLAZA				BUFFALO	NY	14203
MANUFACTURERS AND TRADERS TRUST COMPANY	1 M&T PLAZA				BUFFALO	NY	14203
NEW YORK STATE DEPARTMENT OF LABOR	STATE OFFICE CAMPUS	BUILDING #12	ROOM 256		ALBANY	NY	12240

NAME	ADDRESS LINE 1	ADDRESS LINE 2	ADDRESS LINE 3	ADDRESS LINE 4	CITY	ST	ZIP
NEW YORK STATE DEPARTMENT OF LABOR – BUS. SERVICES	ATTN: DEBORAH ARBUTINA	290 MAIN STREET			BUFFALO	NY	14202
NORTHWEST BANK	100 LIBERTY STREET				WARREN	PA	16365
NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION	OFFICE OF GENERAL COUNSEL	625 BROADWAY			ALBANY	NY	12233- 0001
NYS DEPARTMENT OF TAXATION & FINANCE	BANKRUPTCY UNIT	PO BOX 5300			ALBANY	NY	12205- 0300
NYS OFFICE OF THE ATTORNEY GENERAL	MAIN PLACE TOWER, SUITE 300A	350 MAIN STREET			BUFFALO	NY	14202
NYS WORKERS’ COMPENSATION BOARD	ATTN: SEAN BREEN, PRINCIPAL WORKERS’ COMP. EXAMINER	OFFICE OF SELF- INSURANCE	328 STATE STREET		SCHENECTADY	NY	12305
OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL	ATTN: LOUIS J. TESTA, ASSISTANT ATTORNEY GENERAL	CIVIL RECOVERIES BUREAU, BANKRUPTCY LITIGATION UNIT	THE CAPITOL		ALBANY	NY	12224- 0341
OFFICE OF THE NYS ATTORNEY GENERAL	LITIGATION BUREAU, BANKRUPTCY UNIT	THE CAPITOL			ALBANY	NY	12224- 0341
OFFICE OF THE UNITED STATES TRUSTEE	ATTN: JOSEPH W. ALLEN	OLYMPIC TOWERS	300 PEARL STREET, SUITE 401		BUFFALO	NY	14202

NAME	ADDRESS LINE 1	ADDRESS LINE 2	ADDRESS LINE 3	ADDRESS LINE 4	CITY	ST	ZIP
SWEET HOME FCU	1960 SWEET HOME ROAD				AMHERST	NY	14228
THE DIOCESE OF BUFFALO, N.Y.	ATTN: CHARLES MENDOLERA, EXECUTIVE DIRECTOR OF FINANCIAL ADMINISTRATION	795 MAIN STREET			BUFFALO	NY	14203
THE NATIONAL CATHOLIC RISK RETENTION GROUP	C/O HURWITZ & FINE, PC	ATTN: JENNIFER A. EHMAN	1300 LIBERTY BUILDING		BUFFALO	NY	14202
U.S. ATTORNEY'S OFFICE	WESTERN DISTRICT OF NEW YORK	138 DELAWARE AVENUE			BUFFALO	NY	14202
U.S. DEPARTMENT OF LABOR	FEDERAL BUILDING	130 SOUTH ELMWOOD AVENUE			BUFFALO	NY	14202
US ENVIRONMENTAL PROTECTION AGENCY, REGION 2	OFFICE OF REGIONAL COUNSEL	ATTN: DOUGLAS FISCHER	290 BROADWAY, 17TH FLOOR		NEW YORK	NY	10007- 1866